

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Pacific Gas and Electric Company

Docket Nos. ER05-130-001,  
ER05-130-003, and  
ER05-150-000

ORDER AFFIRMING PARTIAL INITIAL DECISION AND DENYING  
REHEARING

(Issued May 18, 2006)

1. This order affirms a partial initial decision issued on June 14, 2005, holding that Pacific Gas and Electric Company (PG&E), the owner of jurisdictional transmission facilities, can require that Trinity Public Utilities District (Trinity), a California municipality, execute an interconnection agreement (IA) with PG&E after the termination of Contract 2948A or, as in this proceeding, lacking an executed agreement, be subject to an equivalent rate schedule, in order to remain physically interconnected with PG&E.<sup>1</sup>

2. This order also denies Trinity's pending request for rehearing (where Trinity asserted, among other things, that the Commission had no jurisdiction over the rate schedule at issue here) of the Commission's original order, issued December 30, 2004, that accepted, suspended, and set for hearing PG&E's proposed unexecuted IA with

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<sup>1</sup> *Pacific Gas and Electric Co.*, 111 FERC ¶ 63,062 (2005) (ID). The ID decided the Track I (Phase I) hearing issue of the requirement or not for an IA with a load-serving entity. The ID (and this order) do not address potential Track II hearing issues concerning the justness and reasonableness of the filed rate schedule or the terms of a possible, future mutually agreed-upon IA between PG&E and Trinity.

Trinity, filed under Federal Power Act (FPA) section 205 as a rate schedule.<sup>2</sup> This order affirms the Commission's conclusion in the Hearing Order that PG&E, a public utility, provides Commission-jurisdictional interconnection service to Trinity.

## **I. Background**

### **A. Procedural Background**

3. Trinity, a municipality, purchases all of its power requirements from the Western Area Power Administration (Western) and that purchased power is transported over the grid for ultimate delivery to its retail customers. PG&E's electric system is the last part of the grid that physically interconnects with Trinity's electric system. Since Trinity's inception in 1982, through December 31, 2004, power from Western was delivered to Trinity in accordance with the terms of a 1967 agreement between Western and PG&E for interconnection, power supply integration, and transmission service (Contract 2948A). Contract 2948A provided for its own termination on December 31, 2004. After termination of Contract 2948A, Trinity became a transmission customer of the California Independent System Operator Corporation (CAISO) as it operates PG&E's facilities today. (Since April 1, 1998, the CAISO has been responsible, pursuant to the CAISO Open Access Transmission Tariff (OATT), for the operational control of the "ISO Controlled Grid," which includes PG&E's transmission facilities.)

4. On March 31, 2004, PG&E filed, in Docket No. ER04-690-000, a notice of termination of Contract 2948A and related rate schedules, and an unexecuted IA between PG&E, Western, and certain Western sales customers, including Trinity. Trinity protested its inclusion in the proposed Western-PG&E IA. On October 15 and 22, 2004, PG&E filed, respectively, a proposed settlement agreement with Western and a revised Western-PG&E IA. The settlement IA provided for the coordinated operation of points of interconnection between PG&E and all of Western's customers except Trinity. The Commission subsequently issued an order approving the settlement that authorized: (1) termination of Contract 2948A and (2) a revised PG&E-Western IA (without reference to Trinity), effective January 1, 2005.<sup>3</sup>

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<sup>2</sup> *Pacific Gas and Electric Co.*, 109 FERC ¶ 61,392 (2004) (Hearing Order), *reh'g denied*, 111 FERC ¶ 61,156 (2005).

<sup>3</sup> *Pacific Gas and Electric Co.*, 109 FERC ¶ 61,255 (2004).

5. On November 1, 2004, PG&E filed, in Docket No. ER05-130-000, a proposed unexecuted IA with Trinity to govern interconnection service it provides Trinity after the termination of Contract 2948A. This IA stated the parties' rights and obligations pertaining to the interconnection of their electric systems for the delivery of electricity.<sup>4</sup> Proposed Appendix A identified eight points of PG&E-Trinity interconnection with voltage (kV) and interconnection capacity (kW), "subject [in article 7] to the ISO's operation and control of PG&E's Transmission System." Trinity protested that the proposed unexecuted IA was not jurisdictional and that, upon termination of Contract 2948A, Trinity will take no service from PG&E and, instead, will receive interconnection service from the CAISO.<sup>5</sup>

6. The Hearing Order made the proposed unexecuted IA effective on January 1, 2005. In doing so, the Commission denied Trinity's protest on the jurisdictional issue and stated that PG&E provided interconnection service to Trinity, and that interconnection service and the proposed unexecuted IA are jurisdictional.<sup>6</sup> The Commission set for hearing, however: (1) whether Trinity is required to execute a new IA, Contract 2948A having terminated, or be subject to a filed rate schedule in order to receive continued interconnection service under PG&E's tariff (the Track I proceeding and the subject of this order) and (2) whether the filed rate schedule stating terms and conditions of interconnection service is just and reasonable (potential Track II proceeding).<sup>7</sup>

7. Trinity (and other parties) filed requests for rehearing of the Hearing Order. Trinity again asserted that the Commission should reject PG&E's proposed unexecuted IA as unjust, unreasonable, and unduly discriminatory because PG&E only has a physical connection with and does not provide jurisdictional services to Trinity. If the Commission does not grant rehearing, Trinity asks the Commission to clarify that the CAISO (not PG&E) provides interconnection service, that PG&E may have refund

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<sup>4</sup> The proposed unexecuted IA includes provisions that govern interconnected facilities and coordinated operations, customer obligations for the procurement of power, transmission arrangements, control area arrangements, establishing or modifying points of interconnection, operating requirements, system planning requirements, operational changes, installation and access to facilities, metering requirements, and indemnity.

<sup>5</sup> Hearing Order. 109 FERC ¶ 61,392 at P 32.

<sup>6</sup> *Id.* at P 37; *accord, id.* at P 46 and 56.

<sup>7</sup> *Id.* at P 37-38.

obligations for Trinity's costs if the agreement is rejected, and that no IA is required. On May 5, 2005, the Commission issued an order denying rehearing without, however, addressing Trinity's request for rehearing.<sup>8</sup> (This order affirming the ID renders moot Trinity's request for rehearing, except for its jurisdictional assertions addressed in this order.<sup>9</sup>)

## **B. Tariffs and Agreements**

8. The dispute between PG&E and Trinity involves the CAISO OATT, the Transmission Control Agreement (TCA) between PG&E and the CAISO, and PG&E's OATT.<sup>10</sup>

9. The CAISO OATT states the ISO's obligation to provide to eligible customers open and non-discriminatory access to the ISO-controlled grid. The ISO-controlled grid includes the transmission lines of a participating transmission owner, having a Transmission Control Agreement (TCA) with the ISO, that have been placed under the ISO's operational control. The CAISO OATT requires an IA between a generator requesting interconnection and the interconnecting transmission owner, but it defers the issue of a load IA to the TCA. The TCA provides that "the entity requesting interconnection shall be required to execute an Interconnection Agreement in accordance with the ISO and TO Tariff as applicable...."<sup>11</sup>

10. PG&E's OATT provides that, following a request for interconnection, PG&E must tender an IA which must be filed with the Commission. If an IA is not executed or filed

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<sup>8</sup> *Pacific Gas and Electric Co.*, 111 FERC ¶ 61,156 (2005).

<sup>9</sup> Specific rehearing arguments addressed in or rendered moot by the ID (at P 55-66) and this order affirming the ID are that the Commission erred in holding: (1) that an IA is legally required, (2) that the unexecuted IA is binding on Trinity and effective, (3) that an IA must be filed with the Commission, and (4) that an IA is consistent with Commission precedent.

<sup>10</sup> The full text of relevant sections appears in the Appendix to this order.

<sup>11</sup> The TCA also provides that a participating transmission owner retains the benefits of ownership, and its rights and responsibilities, as to facilities placed under the ISO's operational control.

with the Commission, PG&E's OATT states that PG&E is not obligated to energize an interconnecting wholesale load's interconnection.

## **II. The Initial Decision**

11. The ID granted PG&E's motion for summary disposition (denying Trinity's cross-motion) and concluded that PG&E can require Trinity, on the basis of PG&E's inherent right as the owner of transmission facilities and existing tariffs, to execute an IA or be subject to an equivalent rate schedule, if Trinity's distribution system is to remain interconnected with PG&E.<sup>12</sup> The Presiding Judge concluded that, regardless of the control and operational responsibility of the CAISO, PG&E owns the transmission lines and has a strong interest in making sure that its facilities are, and remain, safely and correctly interconnected with those of other entities.<sup>13</sup> The Presiding Judge stated:

No property owner should be subject to the uncertainties associated with a continuation of past interconnection practices that had the protection of a legal agreement, now that the agreement is gone. It may be that [Trinity] does not need to address the full panoply of requirements in a typical request for interconnection that would apply in a new connection situation, but the terms and conditions of interconnection must be specified somewhere.<sup>[14]</sup>

12. The Presiding Judge stated that PG&E's OATT requires a party interconnecting with its transmission system to have an IA.<sup>15</sup> The Presiding Judge noted that, when Contract 2948A terminated, all parties other than Trinity that owned or operated facilities connected with PG&E-owned facilities that had been covered by Contract 2948A entered into new IAs with PG&E. The Presiding Judge concluded that the execution of such replacement IAs strongly suggests a recognition on the part of entities similarly situated to Trinity that an IA was required.<sup>16</sup> The Presiding Judge also disagreed with Trinity's contention that it did not actually "request" interconnection in accordance with PG&E's OATT, since Trinity is interconnected with PG&E, benefits from interconnection, and

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<sup>12</sup> ID at P 55, 66.

<sup>13</sup> Exhibit PGE-3 at P 21.

<sup>14</sup> ID at 58.

<sup>15</sup> ID at P 60 (*citing* PG&E OATT sections 8.1.3 and 8.1.5).

<sup>16</sup> ID at P 60.

implicitly requests continued interconnection.<sup>17</sup> The Presiding Judge agreed with PG&E that existing agreements did not constitute an IA.

13. Trinity and Trial Staff filed briefs on exceptions, and PG&E filed a brief opposing exceptions. Trinity and Trial Staff assert: (1) that an IA in this proceeding is not required and no request for interconnection was or need be made since the CAISO OATT only requires a request and an IA for a new or changed interconnection; (2) that Commission precedent is inconsistent with a requirement for an IA with Trinity; (3) that Trinity's 1993 Electric Transmission and Distribution Operating Agreement with PG&E (1993 Operating Agreement) and its 2005 Small Utility Distribution Company Agreement (2005 SUDC Agreement) with the CAISO are sufficient for interconnection. Trial Staff argues that Trinity has satisfied CAISO requirements for transmission service, including interconnection service, and should not be required to execute an IA with PG&E under the unique circumstances presented.

### **III. Discussion**

#### **A. ID's Requirement for an IA or Equivalent Rate Schedule**

14. At issue is whether Trinity is required to execute an IA with PG&E (or be subject to an equivalent rate schedule). Trinity's and Trial Staff's briefs on exceptions and PG&E's brief opposing exceptions largely repeat arguments before and decided by the Presiding Judge. Having reviewed the record, the ID, and the parties' briefs, we find that the determinations made by the Presiding Judge are reasonable and supported by the record of this proceeding, and we will affirm them. None of Trinity's or Trial Staff's exceptions warrants reversal of the Presiding Judge's determinations. Accordingly, this order adopts as its own the Presiding Judge's analysis and conclusions and, in the discussion that follows, responds to certain exceptions warranting further discussion.

15. The three tariffs at issue in this proceeding, when reasonably read, require Trinity to execute a PG&E IA governing, or be subject to a rate schedule stating, terms and conditions of interconnection with PG&E.

#### **1. One-Stop Shopping**

16. The Presiding Judge relied on Order No. 2000-A to support his conclusion that interconnection service and an IA might be provided by an entity other than the

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<sup>17</sup> ID at P 58.

RTO/ISO.<sup>18</sup> Trinity asserts, however, that the ID's requirement for an IA between PG&E and Trinity violates the Commission's policy in Order No. 2000-A of one-stop shopping with an RTO/ISO for contracting for transmission services and that the Presiding Judge failed to provide a specific citation in Order No. 2000-A that permits a departure from that policy. Trinity also contends that the Presiding Judge erred in disregarding Commission precedent that interconnection service is a component of transmission service provided by the RTO/ISO.<sup>19</sup> Applying this precedent, Trinity argues that the CAISO, not PG&E, is the provider of interconnection service and that Trinity complies with CAISO OATT requirements.

17. In Order No. 2000-A, while we stated that we expected an RTO/ISO to provide one-stop shopping,<sup>20</sup> we did not intend to deny a transmission owner a right to an IA with an interconnected entity pursuant to specific tariff provisions. Order No. 2000-A thus provides that an RTO/ISO provides transmission service,<sup>21</sup> but that transmission owners "must remain an integral part of the interconnection process."<sup>22</sup> Here, the TCA and PG&E's OATT makes PG&E an integral part of interconnection. Together the TCA and PG&E OATT, quoted in the Appendix, provide for an IA between PG&E and Trinity.

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<sup>18</sup> ID at P 61. *See Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,015-17 (2000), *order on reh'g* Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092, *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>19</sup> Order No. 2000-A at 31,376. Trinity also relies on *Delmarva Power & Light Co.*, 106 FERC ¶ 61,290 at P 22 (2004) (*Delmarva I*), *order on subsequent submittals*, 110 FERC ¶ 61,186 (2005) (*Delmarva II*); *Tennessee Power Co.*, 90 FERC ¶ 61,238 at 61,761 (2000) (*Tennessee Power*); *Central Maine Power Co.*, 90 FERC ¶ 61,214 at 61,707 (2000) (*Central Maine*); and *PJM Interconnection, L.L.C.*, 87 FERC ¶ 61,299 at 62,199, *reh'g denied*, 89 FERC ¶ 61,186 (1999) (*PJM*), as well as *Cities of Azusa*, 107 FERC ¶ 61,179 at P 25 (2004).

<sup>20</sup> Order No. 2000-A at 31,376.

<sup>21</sup> Order No. 2000-A at 31,375.

<sup>22</sup> Order No. 2000-A at 31,376. Indeed, the Commission expressly acknowledged there would be circumstances in which an RTO/ISO's authority over interconnection would, by definition, be limited, *e.g.*, where the interconnecting facilities are not put under the RTO/ISO's control. Order No. 2000-A at 31,376.

18. The Commission precedent Trinity relies on does not support its assertion that the CAISO is necessarily the sole provider of interconnection service under a one-stop shopping concept. While the Presiding Judge addressed this precedent, we find that some additional comment is in order. In *Delmarva I*, a post-Order No. 2000-A order, we stated that “*as much as is practicable*,” RTOs/ISOs provide one-stop shopping for transmission customers.<sup>23</sup> (In *PJM Interconnection L.L.C.*, a pre-Order No. 2000-A order, we similarly specifically rejected the contention that “the requirement to enter into an interconnection agreement [for generation] *with a TO* invalidates the one-stop shopping concept inherent in an ISO.”<sup>24</sup>) In fact, as it is PG&E-owned facilities that are interconnected with Trinity, it is PG&E that performs maintenance and handles system coordination for those facilities.

19. Interconnection, like the actual transmission of electric energy, is essential to effectuate the delivery of electric energy from a generator to a load. Just as transmission is jurisdictional, interconnection is part and parcel of transmission, as we explain at greater length below, and so interconnection is likewise jurisdictional. While the CAISO provides jurisdictional transmission service, PG&E is interconnected with Trinity and PG&E provides jurisdictional interconnection service. The relevant provisions of the TCA and PG&E OATT, quoted in the Appendix, include specific provisions for interconnection service and, when reasonably read, require an IA between a transmission owner and an interconnected system. In contrast, the CAISO OATT has express provisions for an IA with generation, but does not address an IA with load.

## **2. Commission PJM-Related Precedent**

20. The Presiding Judge concluded that the requirement for an IA between PG&E and Trinity is not inconsistent with PJM-related Commission precedent,<sup>25</sup> *e.g.*, *Delmarva*

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<sup>23</sup> *Delmarva I*, 106 FERC ¶ 61,290 at P 21. In this regard, in reaching the conclusion it did on the record in *Delmarva I*, the Commission initially noted that “a PJM transmission customer is under no apparent obligation to enter into such an agreement” [*i.e.*, an IA with Delmarva]. *Id.* at P 24. That is not the case here, however, where there is such an obligation under the tariffs discussed elsewhere in this order and quoted in the Appendix.

<sup>24</sup> *PJM*, 87 FERC at 62,199 (emphasis added).

<sup>25</sup> *ID* at P 61-63, 65.



*Power & Light Co.*,<sup>26</sup> *Virginia Electric & Power Co.*,<sup>27</sup> and *American Electric Power Service Corp.*<sup>28</sup> Trinity and Trial Staff assert, however, that the Presiding Judge misread this PJM-related precedent and erroneously required an IA or equivalent rate schedule. These PJM-related load interconnection cases applied PJM Operating Agreement (PJM Agreement) section 4.7 which requires an IA between the transmission owner and an interconnected entity not a party to the PJM Agreement for the safe and reliable operation of the interconnected grid.<sup>29</sup> The TCA, in conjunction with PG&E's OATT, as interpreted by the Presiding Judge, is similar in effect to PJM Agreement section 4.7, *i.e.*,

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<sup>26</sup> 106 FERC ¶ 61,290 (2004) (*Delmarva I*) (initially rejecting unexecuted load IAs, *order on subsequent submittals*, 110 FERC ¶ 61,186 (2005) (*Delmarva II*) (ultimately accepting executed load IAs. In *Delmarva I*, Delmarva originally submitted, among other things, unexecuted IAs with seven municipal customers. *Delmarva I*, 106 FERC ¶ 61,290 at P 3. The Commission concluded that Delmarva had “failed to demonstrate the necessity” of the unexecuted IAs and so found that they could not be accepted “at this time;” instead, the Commission ordered the filing of additional information – addressing, among other things, why these unexecuted IAs were necessary and whether there was anything in the various relevant tariffs and agreements that would make these unexecuted IAs necessary. *Id.* at P 20, 25-28. In *Delmarva II*, the Commission had before it the information submitted in response to *Delmarva I* and new executed IAs (which were now called “mutual operating agreements”). *Delmarva II*, 110 FERC ¶ 61,186 at P 1, 4-5, 8-9. The Commission concluded that the IAs “are required by PJM’s Tariff and are necessary for Delmarva’s operations,” and that “the parties’ responses demonstrate the need for the proposed agreements;” accordingly, they were accepted. *Id.* at P 15; *cf. id.* at P 8-9 (describing the information provided by Delmarva and PJM on the necessity of the proposed agreements, and on the tariff and other language that called for such agreements).

<sup>27</sup> 110 FERC ¶ 61,348 (2005) (rejecting the transmission owner’s *pro forma* IA in favor of future individually negotiated load IAs).

<sup>28</sup> 110 FERC ¶ 61,187 (2005) (*pro forma* service agreement covering load interconnections accepted).

<sup>29</sup> *Delmarva II*, 110 FERC ¶ 61,186 at P 8-9, 15. Section 4.7 (Connections with Non-Parties) provides:

No Party shall permit its transmission or distribution facilities to be connected with the facilities of any entity which is not a Party without first having in place an interconnection agreement....

if there is a load interconnection point (whether existing or new), the interconnecting entity must have an effective IA with the transmission owner.<sup>30</sup>

21. The CAISO OATT has no provisions governing interconnections with load. The CAISO OATT contains no provision that states that the CAISO is the sole provider of interconnection service, and correspondingly no provision that prohibits the transmission owner from requiring a load IA stating terms for interconnection service. Rather, section 10.2.3 of the CAISO/PG&E TCA requires such an IA “in accordance with the ISO and TO Tariff as applicable....” PG&E OATT section 8.1.5, in turn, requires an IA for interconnecting wholesale loads without distinguishing between new or existing interconnection points and even without expressly requiring a request for interconnection.<sup>31</sup>

22. We cannot say that the Presiding Judge’s reading of the California tariffs or PJM-related precedent is unreasonable. Indeed, when reasonably read and applied to the circumstances of PG&E’s and Trinity’s relationship, the relevant tariff provisions in this proceeding produce the same result as the PJM-related cases; there must be an IA (or equivalent rate schedule) between PG&E and Trinity. In this regard, Trinity, a municipality, physically interconnects with PG&E-owned facilities and, is in the same position as the municipalities that were physically interconnected with the transmission owner in *Delmarva II*.

23. In sum, the Presiding Judge correctly applied Commission precedent to conclude that, under the relevant tariffs, an executed IA (or equivalent rate schedule) between PG&E and Trinity is required. Our reading of Commission precedent does not support Trinity’s and Trial Staff’s assertion that the ID departs from that precedent without explanation or is inconsistent with it.

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<sup>30</sup> ID at P 58-60. *See* PG&E OATT sections 8.1.3 (request for interconnection in writing and tender of an IA) and 8.1.5 (load IA or no energization), as well as TCA sections 4.1.1 (CAISO is subject to applicable IAs), 4.3 (PG&E retains benefits of ownership), and 10.2.3 (if an entity requests interconnection, it must execute an IA in accordance with the PG&E tariff).

<sup>31</sup> PG&E OATT section 8.1.5’s requirement for a load IA is unconditional (as compared to section 8.1.3’s written request condition, subsequently discussed in this order).

### **3. Interpretation of Tariff Conditions**

24. The Presiding Judge concluded that Trinity implicitly requests continued interconnection from PG&E, thus triggering the tariff requirement for an IA.<sup>32</sup> Trinity and Trial Staff contend, however, that the Presiding Judge erred in requiring an IA or equivalent rate schedule because the tariffs only require an IA in the case of “new” or upgraded points of interconnection and only if Trinity makes a written “request” for interconnection for such new or upgraded points.

25. We disagree with Trinity and Trial Staff. While Trinity did not request in writing continued interconnection or an IA pursuant to TCA section 10.2.3<sup>33</sup> and PG&E OATT section 8.1.3, we find that the Presiding Judge has reasonably concluded that Trinity implicitly requested continued interconnection since it desires to remain interconnected with PG&E.<sup>34</sup> Also, we believe that the continuation of service after the termination of Contract 2948A is the equivalent of establishing a new interconnection point. Further, we note that upon the expiration of Contract 2948A, Trinity did request and receive transmission service from the CAISO.<sup>35</sup> While Trinity made no corresponding formal request for interconnection service from PG&E, Trinity is unable to receive Western’s power without Trinity’s continued interconnection with PG&E. We thus view the transmission from the CAISO as consent to a request for interconnection under the applicable tariffs. Thus, Trinity is deemed to have satisfied the conditions of those tariffs and is required to execute an IA or be subject to an equivalent rate schedule.

26. Trinity’s and Trial Staff’s reading of the TCA and PG&E’s OATT is unreasonable in light of the reality of Trinity’s interconnection and the broad scope of PG&E OATT section 8.1.5 which does not expressly require a request for interconnection. There is no justification to afford less contractual protection to an existing interconnection between Trinity and PG&E than to a new one. Indeed, under Trinity’s and Trial Staff’s concept, after the termination of Contract 2948A, there would be no contractual terms and conditions governing the interconnection between Trinity and PG&E. The lack of such provisions raises safety and reliability concerns for the grid that the TCA and PG&E’s OATT, if reasonably read, would avoid.

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<sup>32</sup> ID at 58.

<sup>33</sup> ID at P 11 (Stipulation 11).

<sup>34</sup> ID at P 58-60.

<sup>35</sup> ID at P 11 (Stipulation 7).

#### **4. Generic vs. Case-by-Case Approach**

27. The Presiding Judge evaluated the facts of the case and concluded that the applicable tariffs required an IA between PG&E and Trinity. Trinity and Trial Staff contend, however, that since the Commission has not generically required a *pro forma* load IA (as contrasted to a *pro forma* generator IA required in Order No. 2003<sup>36</sup>), there is no basis for the Presiding Judge's conclusion that an IA is required here. Trinity asserts that requiring individual IAs with individual customers would create considerable administrative burden without commensurate benefit.

28. The Commission can proceed on a case-by-case basis, as in this order, or generically in a rule to require a *pro forma* load IA, as the circumstances warrant.<sup>37</sup> So far, the Commission has employed a case-by-case approach and individually negotiated IAs.<sup>38</sup> The absence of a final rule establishing generic load-interconnection standards for all public utilities does not negate the TCA or PG&E's OATT, and PG&E's consequent right, to require an IA or, lacking an executed IA, to file a rate schedule for terms and conditions of interconnection service.

#### **5. Insufficiency of Current Agreements**

29. The Presiding Judge concluded that, with the termination of Contract 2948A, there are no currently effective terms and conditions of interconnection and succinctly agreed with PG&E that its unfiled and currently effective 1993 Operating Agreement with Trinity did not contain the typical elements of an IA.<sup>39</sup> The Presiding Judge also noted that Trinity's 2005 SUDC Agreement with CAISO, required by CAISO OATT section

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<sup>36</sup> See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2005), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005).

<sup>37</sup> See, e.g., *Domtar Maine Corp. v. FERC*, 347 F.3d 304, 314 (D.C. Cir. 2003); *accord SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947).

<sup>38</sup> See *Virginia Electric and Power Co.*, 110 FERC ¶ 61,348 at P 26 (2005).

<sup>39</sup> ID at P 57 n. 2. See Exhibits PGE-1 at 5, 6 and PGE-2.

4,<sup>40</sup> was not enough because PG&E, the transmission owner, cannot be ignored.<sup>41</sup> Trinity and Trial Staff assert, respectively, that the 1993 Operating Agreement alone or that the 1993 Operating Agreement together with the 2005 SUDC Agreement adequately address the necessary terms of interconnection and amount to an IA.

30. We find, as the Presiding Judge also found, that the currently effective 1993 Operating Agreement with Trinity is missing major contract provisions necessary for an IA today. It addresses, in general terms, the cost of switch installation, substation security, distribution operations, communications for prearranged maintenance outages on the Wildwood Alternate Feed, protective hardware at the Peanut and Wildwood stations, and infractions. However, interconnection points are not identified, facilities are not listed, and there are no provisions regarding the CAISO or control area arrangements, system planning, upgrade facilities, metering, regulatory and operating changes, installation and access, metering responsibility, billing and payment, adverse impacts, or system coordination, and it also contains no provisions addressing its term and termination.<sup>42</sup> The 1993 Operating Agreement, which was never filed with the Commission,<sup>43</sup> only operated in conjunction with jurisdictional Contract 2948A, which

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<sup>40</sup> CAISO OATT section 4 provides:

The ISO shall not be obligated to accept Schedules, Adjustment Bids or bids for Ancillary Services which would require Energy to be transmitted to or from the Distribution system of a UDC directly connected to the ISO Controlled Grid unless the relevant UDC has entered into a UDC Operating Agreement.

<sup>41</sup> ID at P 64. PG&E's notice of termination of Contract 2948A prompted the CAISO to file, on November 1, 2004, in Docket No. ER05-150-000, an unexecuted Utility Operating Agreement with Trinity, which ultimately resulted in Commission approval of the 2005 SUDC Agreement, effective January 1, 2005, pursuant to a settlement (CAISO service agreement No. 603). *California Indep. Sys. Operator Corp.*, 109 FERC ¶ 61,391 at P 68-77 (2004), *order conditionally approving contested settlement*, 112 FERC ¶ 61,324 (2005).

<sup>42</sup> Exhibit PGE-1 at A12. *Cf. supra* note 4 (summarizing the proposed unexecuted IA).

<sup>43</sup> In this regard, the Commission found that since the 1993 Operating Agreement was not on file, the Commission erred in directing Trinity to file an amendment with the Commission. *California Indep. Sys. Operator Corp.*, 114 FERC ¶ 61,179 at P 8 (2006).

has since terminated. The proposed unexecuted IA operates in conjunction with the CAISO and updates roles and responsibilities in the post-Contract 2948A environment.

31. The 2005 SUDC Agreement addresses operating matters between the CAISO and Trinity, and Schedule 6 (interconnection operation standards) of that agreement merely requires Trinity “to avoid any material adverse impact on the reliability of the ISO Controlled Grid,” follow Good Utility Practice as to normal and emergency ratings, voltage limits, and balance of load, and to maintain unity power factors. These general directives lack the specificity necessary to be an IA. The 2005 SUDC Agreement, moreover, does not satisfy the PG&E OATT definition of an IA, as it is not between PG&E and Trinity, the interconnected party. Indeed, since PG&E is not a party to the 2005 SUDC Agreement, PG&E also would be unable to enforce its requirements should Trinity not comply and adversely affect safety or reliability.

32. In comments opposing the settlement filed in Docket No. ER05-150-000, PG&E asked the Commission to clarify that the settlement’s 2005 SUDC Agreement with Trinity is not an IA. The Commission, in an order approving settlement, deferred that issue for resolution in this order.<sup>44</sup> Here we find that the 2005 SUDC Agreement does not satisfy the PG&E OATT definition of an IA.

### **B. Trinity’s Request for Rehearing/Clarification**

33. The Hearing Order concluded that PG&E, a public utility under the FPA, provides jurisdictional interconnection service to Trinity and, therefore, that the Commission has jurisdiction pursuant to FPA section 205 over the unexecuted Trinity IA and can require its filing.<sup>45</sup> Trinity asserts, however, that, after Contract 2948A terminated, PG&E provided Trinity with no jurisdictional services.<sup>46</sup>

34. FPA sections 201 and 205 grant the Commission jurisdiction over and the authority to regulate the rates and charges for, the transmission of electric energy in interstate commerce.<sup>47</sup> FPA section 201 provides that FPA Part II “shall apply to the

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<sup>44</sup> *California Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,324 at P 10, 13 (2005), *reh’g dismissed on other grounds*, 114 FERC ¶ 61,179 (2006).

<sup>45</sup> Hearing Order, 109 FERC ¶ 61,392 at P 37.

<sup>46</sup> The parties stipulated that the CAISO (not PG&E) provides transmission service to Trinity. ID at P 11 (Stipulation 7).

<sup>47</sup> *Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,985-86, *order on reh’g*, 65 FERC ¶ 61,081 (1993).

transmission of electric energy in interstate commerce,” and that the Commission “shall have jurisdiction over the facilities for such transmission.”<sup>48</sup> FPA section 205, in turn, provides that “every public utility shall file with the Commission . . . schedules showing all rates and charges for any transmission...subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.”<sup>49</sup> FPA section 205 also directs that “[a]ll rates and charges made, demanded or received by any public utility for or in connection with the transmission of electric energy subject to the jurisdiction of the Commission...shall be just and reasonable.”<sup>50</sup>

35. PG&E OATT section 8.1.5 provides that PG&E

Shall not be obligated to energize, nor shall ... *wholesale load* be entitled to have its interconnection to the ISO Grid energized, *unless and until an Interconnection Agreement has been executed....*

36. Interconnection service, the Commission has previously found, is an element of transmission service;<sup>51</sup> that is, interconnection is part and parcel of transmission of electric energy in interstate commerce, and thus interconnection service is part and parcel of jurisdictional transmission service.<sup>52</sup> Here, where the physical interconnection facilities already exist, that interconnection service involves the on-going safe and reliable operation and maintenance of, and the parties’ rights and responsibilities

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<sup>48</sup> 16 U.S.C. § 824(b)(1) (2000).

<sup>49</sup> 16 U.S.C. § 824d(c) (2000).

<sup>50</sup> 16 U.S.C. § 824d(a) (2000).

<sup>51</sup> *Tennessee Power Co.*, 90 FERC ¶ 61,238 at 61,761; *Central Maine Power Co.*, 90 FERC ¶ 61,214 at 61,707.

<sup>52</sup> While the *pro forma* tariff originally envisioned a process where the separate interconnection and delivery components of a transmission service request were made at the same time, they do not necessarily have to be and the interconnection request can be (and, based on our experience to date, in practice often is) made in advance of a delivery request. See, e.g., *Tennessee Power*, 90 FERC ¶ 61,238 at 61,761.

associated with, the relevant physical interconnection facilities.<sup>53</sup> PG&E's proposed unexecuted IA thus identifies the respective rights and responsibilities of PG&E and of Trinity to ensure on-going safe and reliable operation and maintenance of the relevant physical interconnection facilities; in the absence of such a document, there would, at best, be uncertainty as to who had what rights and what responsibilities, and, at worst, neither party arguably would have any rights or any responsibilities as to the relevant physical interconnection facilities (there is, after all, no CAISO tariff, rate schedule, or agreement governing interconnection with load). In this regard, an IA protects not just PG&E but Trinity as well, as it spells out Trinity's rights and PG&E's responsibilities and obligations to Trinity.

37. As noted in rate schedule section 2.8, the proposed unexecuted IA "is intended to provide for the terms and conditions of a continuation of the interconnections between the Electric Systems of the parties from and after the termination of Contract 2948A...." Under section 5.1, Trinity's electric system "shall be interconnected with PG&E's Electric System, and the two Electric Systems shall be operated in parallel pursuant to the terms and conditions of this Agreement." PG&E is responsible for, among other things, maintenance and switching operations of its system (section 6.4.2.2), coordination of operations (section 8.2), and load profiling and use of automatic protective devices (section 8.9.4).<sup>54</sup>

38. Consequently, we find that the interconnection service provided by PG&E, a public utility, to Trinity that is at issue in this proceeding is jurisdictional and the

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<sup>53</sup> ID at P 56-57. The typical interconnection request, and interconnection service, involves a new interconnection, and thus involves planning for and constructing new facilities. *See, e.g., American Operating Companies*, 89 FERC ¶ 61,041 at 61,118, *order on reh'g*, 89 FERC ¶ 61,208 (1999); *accord* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 1-4, 8-12, 34-38, 293-96. But that need not always be the case, and an agreement would still be appropriate even where physical interconnection facilities may already exist -- to address, for example, the on-going safe and reliable operation and maintenance issues associated with the pre-existing physical interconnection facilities. *See North Hartland, LLC*, 105 FERC ¶ 61,392 at P 21-22 (2003), *reh'g denied*, 106 FERC ¶ 61,102 (2004), *interconnection agreement conditionally accepted sub nom. Central Vermont Public Service Corp.*, 106 FERC ¶ 61,247 at P 23, 32-35, *compliance filing dismissed*, 109 FERC ¶ 61,195 (2004); *Central Maine Power Co.*, 105 FERC ¶ 61,082 at P 19 (2003).

<sup>54</sup> *Accord supra* note 42 and accompanying text (identifying topics missing from the 1993 Operating Agreement).



proposed unexecuted IA for such service is jurisdictional.<sup>55</sup> In this regard, we have previously exercised our jurisdiction under sections 201 and 205 and accepted similar load IAs in *American Electric Power Service Corp.*<sup>56</sup> and *American Transmission Co.*<sup>57</sup> While the delivery component of transmission service comes from the CAISO and all PG&E facilities connected to Trinity have been turned over to the CAISO, there is no requirement that interconnection and delivery components of transmission service must be performed by the same entity. PG&E's OATT, moreover, authorizes an IA between the Transmission Owner and the interconnected party or an equivalent rate schedule.

39. In sum, therefore, PG&E provides Trinity with jurisdictional interconnection service and PG&E's proposed unexecuted IA is likewise jurisdictional. Trinity's request for rehearing as to this matter is therefore denied.<sup>58</sup>

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<sup>55</sup> Hearing Order, 109 FERC ¶ 61,392 at P 37; *accord* ID at P 61. We note that PG&E owns the facilities that are physically interconnected to Trinity and that the CAISO does not own facilities. Hearing Order, 109 FERC ¶ 61,392 at P 29; *accord* ID at P 61.

<sup>56</sup> 110 FERC ¶ 61,276 at P 8, *reh'g denied*, 112 FERC ¶ 61,128 at P 10-11 (2005) (AEP) (transmission to transmission IA). While the Commission required the relevant RTOs to be signatories to the transmission to transmission IA at issue as well, that was a reflection that, given their role in operating and planning, the Commission wished to ensure that the RTOs were "fully apprised" of the matters at issue and had an opportunity to timely raise any concerns. Importantly, the Commission did *not* say that only the RTOs should be signatories to the exclusion of the transmission owners. *See id.*

<sup>57</sup> 111 FERC ¶ 61,350 (2005) at P 7 (transmission to distribution IA); *accord* AEP, 112 FERC ¶ 61,128 at P 12. In these cases, in contrast to transmission-transmission IAs, like those mentioned in the prior footnote, the Commission found that IAs between transmission systems and distribution systems would *not* need RTO signatures.

<sup>58</sup> Order No. 2003-C does not warrant a different result. There, the Commission addressed the circumstances of a generator interconnecting to otherwise local distribution facilities, *i.e.*, interconnecting to facilities that otherwise would only be used for retail sales, and concluded that such interconnection would not make the facilities jurisdictional because to rule to the contrary would result in the "involuntary conversion" of state-jurisdictional local distribution facilities to Commission-jurisdictional transmission facilities. Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 at P 51-53. This is not the case here, however, where the PG&E facilities are transmission facilities and not local

40. Trinity also contends that the Commission has no jurisdiction over its facilities. Insofar as Trinity is not a public utility, we agree, but we also again note that, as we explained in the Hearing Order and in our discussion above, here interconnection service is jurisdictional service provided by a public utility and hence the IA would be a jurisdictional agreement. The request for rehearing is therefore denied.

41. Trinity asks the Commission, if it denies rehearing on the jurisdictional issue, to require the parties to participate in an informal technical conference to develop a new IA. The terms of an unexecuted IA appear in PG&E's filed rate schedule, which became effective on January 1, 2005, subject to refund. The Chief Administrative Law Judge deferred Track II proceedings in an order issued on March 15, 2005, pending our resolution in this order of the Track I proceeding. If the parties wish to pursue changes to this rate schedule, they may do so in the Track II proceeding on the justness and reasonableness of PG&E's rate schedule. The request for an informal technical conference is therefore denied.

42. The Hearing Order accepted and suspended PG&E's proposed IA and made it effective subject to refund. Trinity contends that, since PG&E proposed no rates in its filing, the Commission should clarify the nature of PG&E's refund responsibility to Trinity. Recognizing that the IA does not propose rates for interconnection service, the nature of any remedy that may be ordered at the conclusion of the Phase II proceeding will be addressed and decided in that proceeding. It would be premature to address it now.

The Commission orders:

(A) The partial ID issued in this proceeding is hereby affirmed without modification, and all exceptions are hereby denied as discussed in the body of this order.

(B) Trinity's request for rehearing in Docket No. ER05-130-001 on the jurisdictional issue is hereby denied.

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distribution facilities; that is, here, Trinity is interconnected to and wishes to continue to be interconnected to Commission-jurisdictional transmission facilities.

(C) Trinity's request for an informal technical conference is hereby denied, and the parties may pursue any disputed rate schedule provisions in Track II of these proceedings.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

**APPENDIX**

**CAISO OATT**

CAISO OATT section 2.1.1 (open access) provides:<sup>59</sup>

The ISO shall ... provide to all Eligible Customers open and non-discriminatory access to the ISO Controlled Grid regardless of the locations of their connections to the ISO Controlled Grid in accordance with the terms of this ISO Tariff ....

Appendix A defines “ISO Controlled Grid” as

The system of transmission lines and associated facilities of the Participating TOs [party to a TCA] that have been placed under the ISO’s Operational Control.<sup>[60]</sup>

CAISO tariff section 5.7.6 (energization) states:

Neither the ISO nor the Interconnecting P[articipating] T[ransmission] O[wner] shall be obligated to energize, nor shall the New Facility Operator [owner of a planned new *generation* facility or existing repowered *generating* unit pursuant to section 5.7] be entitled to have its interconnection to the ISO Controlled Grid energized, *unless and until an Interconnection Agreement has been executed*, or filed at FERC pursuant to [the CAISO tariff], and becomes effective and such New Facility Operator has demonstrated to the ISO’s reasonable satisfaction that it has complied with all of the requirements of this section.<sup>[61]</sup>

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<sup>59</sup> References are to the CAISO conformed tariff as of June 27, 2005.

<sup>60</sup> The same definition for “ISO Controlled Grid” appears in the TCA.

<sup>61</sup> Emphasis added. The CAISO OATT requires an IA for a generation interconnection, but does not include an equivalent provision requiring (or, alternatively, a provision prohibiting) IAs for interconnections with load. The PG&E OATT and the TCA, which tracks relevant provisions of the PG&E OATT, require IAs for interconnections with load.

Appendix A defines an “IA” as a:

*Contract between a party requesting interconnection and the participating T[ransmission] O[wner] that owns the transmission facility with which the requesting party wishes to interconnect. [62]*

### **TCA**

Section 4.1.1 (Transfer of operational control, ISO Controlled Grid) states:

*[S]ubject to the applicable interconnection ... agreements, each Participating TO shall place under the ISO’s Operational Control the transmission lines and associated facilities forming part of the transmission network that it owns or to which it has Entitlements....[63]*

Section 4.3 (rights and responsibilities of participating TOs) provides:

*Each Participating TO shall retain its benefits of ownership and its rights and responsibilities in relation to the transmission lines and associated facilities placed under the ISO’s Operational Control except as otherwise provided in this Agreement. [64]*

Section 10.2.3 (interconnection, system upgrades) provides:

A Participating TO shall be entitled to require a entity *requesting* Interconnection to pay for all necessary system reliability upgrades on its side of the Interconnection and on the ISO Controlled Grid, as well as for all required studies, inspection and testing, to the extent permitted by FERC policy. *The entity requesting interconnection shall be required to execute an Interconnection Agreement in accordance with the ISO and TO Tariff as applicable*, provided that the terms of the ISO Tariff shall govern to the extent there is any inconsistency between the ISO and the TO Tariff, and must comply with all of their provisions,

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<sup>62</sup> Emphasis added. TCA Appendix D and PG&E OATT section 3.45 repeat the CAISO’s definition of an IA.

<sup>63</sup> Emphasis added.

<sup>64</sup> Emphasis added.

including provisions related to creditworthiness and payments for Facility Studies. [<sup>65</sup>]

### **PG&E's OATT**

Section 8. 1.3 (interconnection agreement) of PG&E's OATT provides:

[A] party *requesting* Interconnection shall request in writing that the Participating T[ransmission] O[wner] tender to such party *an Interconnection Agreement that will be filed with FERC*, or the Local Regulatory Authority, in the case of a Local Publicly Owned Electric Utility ....[<sup>66</sup>]

Section 8.1.5 (energization) provides:

[PG&E] shall not be obligated to energize, nor shall ... *wholesale load* [<sup>67</sup>] be entitled to have its interconnection to the ISO Grid energized, *unless and until an Interconnection Agreement has been executed, or filed at FERC pursuant to Section 8.1.3, and becomes effective....* [<sup>68</sup>]

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<sup>65</sup> Emphasis added.

<sup>66</sup> Emphasis added.

<sup>67</sup> Emphasis added. Trinity takes “wholesale load” from PG&E.

<sup>68</sup> Emphasis added. In addition, PG&E's Interconnection Handbook (section L2), revised December 15, 1997, specifies the “protective and control requirements for interconnection requests from Load entities (load-only) to the PG&E Power System.” Exhibit PGE-3 (page 8 of 14).